

United States
Circuit Court of Appeals
For the Ninth Circuit

HARRY THOMPSON, JOHN MARS, and DOUGLAS PARKER,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the United States District Court
for the District of Montana.

FILED

FEB - 9 1935

PAUL F. O'NEIL,
CLERK

NO. 7740

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Circuit Court of Appeals
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LAS PARKER,

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Attorneys, Names and Addresses of.....	1
Answer	12
Exhibit "A"—Decree in Cause No. 1215, U. S. v. Verburg et al.....	17
Exhibit "B"—Bond in Cause No. 1215, U. S. v. Verburg et al.....	20
Assignment of Errors.....	69
Bill of Exceptions.....	26
Certificate of Judge to.....	67
Exhibits of Plaintiff—	
Judgment Roll in Cause No. 1215, U. S. v. Verburg, et al.....	29
Writ of Injunction in Cause No. 1215, U. S. v. Verburg, et al.....	43
Bond filed in Equity Cause No. 1215, U. S. v. Verburg, et al.....	47
Judgment Roll in Case No. 3894, U. S. v. Knouse.....	51
Judgment Roll in Case No. 2593, U. S. v. Knouse, et al.....	59
Bond on Appeal.....	75
Caption	2
Complaint	2
Citation on Appeal.....	73
Clerk's Certificate to Transcript.....	78

	Page
Demurrer of Defendant John Mars	8
Demurrer of Defendant Douglas Parker	9, 10
Exhibits of Plaintiff—	
Judgment Roll in Cause No. 1215, U. S. v. Verburg, et al.....	29
Writ of Injunction in Cause No. 1215, U. S. v. Verburg, et al.....	43
Bond filed in Equity Cause No. 1215, U. S. v. Verburg, et al.....	47
Judgment Roll in Case No. 3894, U. S. v. Knouse	51
Judgment Roll in Case No. 2593, U. S. v. Knouse, et al.....	59
Judgment	24
Judgment Roll Certificate.....	26
Order Overruling Demurrer of Defendant John Mars	10
Order Overruling Demurrer of Defendant Douglas Parker	12
Order Allowing Appeal.....	72
Petition for Appeal.....	67
Praeceptum for Transcript of Record.....	77
Summons, and Marshal's Returns thereon.....	6, 7
Verdict of the Jury.....	23

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

MR. LOUIS P. DONOVAN,
Shelby, Montana.

Attorney for Appellants and Defendants.

MR. JAMES H. BALDWIN,
United States District Attorney, and

MR. R. LEWIS BROWN,
Assistant United States District Attorney,
Both of Butte, Montana.

Attorneys for Appellee and Plaintiff. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the District of Montana.

(Great Falls Division.)

No. 833.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY THOMPSON, JOHN MARZ, and
DOUGLAS PARKER,

Defendants.

BE IT REMEMBERED, that on October 16th, 1931, the complaint was duly filed herein, in the words and figures following, to wit: [2]

[Title of Court and Cause.]

COMPLAINT

Comes now the plaintiff and for cause of action alleges:

1. That on or about the 12th day of May, 1930, a decree was duly entered by the District Court of the United States for the District of Montana, Great Falls Division, in a case then therein pending, being Equity Case No. 1215, entitled United States of America, plaintiff, versus Ted Verberg and Harry Thompson, defendants, wherein it was ordered, adjudged and decreed that the said defendants, Ted Verberg and Harry Thompson, and all other persons be restrained and enjoined from manufacturing, selling, keeping or bartering any

intoxicating liquor as defined in Section I, Title II of the National Prohibition Act, upon the following described premises:

That certain two-story brick building known as the Thompson Hotel, situated on Lot 3, and 4, Block 2, Original Townsite of Sweet Grass, in the County of Toole, in the State and District of Montana,

and from using said premises as a common and public nuisance as defined in Section 21, Title II, of the National Prohibition Act; and from using or occupying or permitting said premises to be used or occupied for any purpose whatever for a period of one year from the date thereof, or until the further order of said court, which said decree provided, however, that said premises might remain open during said period and might be occupied and used for legitimate purposes if the said defendant Harry Thompson should give a bond in the sum of one thousand dollars (\$1,000.00) conditioned as in said decree provided. [3]

2. That, thereafter, and on or about the 31st day of May, 1930, the said Harry Thompson, the defendant above named, as principal, and the defendants John Marz and Douglas Parker, as sureties, in order that said premises might remain open in accordance with the provisions of said decree as aforesaid, duly made, executed and delivered to plaintiff their joint and several bond to the United States of America in the penal and liquidated sum

of \$1,000.00. That said bond was duly approved and filed in the above entitled court on the 13th day of June, 1930. That ever since the execution of said bond and during all of the times herein mentioned and to and including the date of the filing of this complaint said bond was and now is, in full force and effect. That the conditions of said bond are, if said premises shall be used and occupied during said period of one year and if no intoxicating liquor is, during said period, manufactured, sold, bartered, kept or otherwise disposed of therein or thereon, and if the said principal and sureties will pay all fines, costs, and damages that may be assessed for any violation of the National Prohibition Act upon said property, then said obligation shall be null and void, otherwise to remain in full force and effect.

3. That said defendants have wholly failed to perform the conditions of said bond in that on or about the 16th day of April, 1931, one Everett Knouse, did, upon said premises hereinbefore described, then and there wilfully, wrongfully and unlawfully have and possess intoxicating liquor, to-wit, beer, whiskey and wine for beverage purposes, and without a permit so to do.

4. That by reason of the premises the said defendants have jointly and severally become and are liable to the plaintiff in the sum of \$1,000.00, together with lawful interest thereon from and after the date hereof.

WHEREFORE, plaintiff prays judgment against said defendants for the sum of \$1,000.00, with law-

ful interest thereon from the date hereof, together with plaintiff's costs of suit herein expended.

ARTHUR P. ACHER
Assistant United States Attorney. [4]

Arthur P. Acher being first duly sworn, on oath, deposes and says:

That he is a duly appointed, qualified, and acting Assistant United States Attorney for the District of Montana, and as such makes this verification to the foregoing complaint; that he has read the said complaint and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

ARTHUR P. ACHER.

Subscribed and sworn to before me this 16th day of September, 1931.

[Seal]

MARJORIE McLEOD.

Notary Public for the State of Montana,
Residing at Helena, Montana.

My commission expires March 31st, 1934.

[Endorsed]: Filed Oct. 16, 1931. [5]

Thereafter, on October 16, 1931, Summons was duly issued herein, which said Summons with return of service thereof, is in the words and figures following, towit: [6]

[Title of Court and Cause.]

SUMMONS

Action brought in the said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Great Falls, County of Cascade. Assigned to Great Falls Division.

The President of the United States of America,
Greeting:

To the Above-named Defendant: Harry Thompson, John Marz and Douglas Parker.

YOU ARE HEREBY SUMMONED to answer the complaint in this action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

WITNESS, the Honorable Charles N. Pray, Judge of the United States District Court, District of Montana, this 16th day of October in the year of our Lord one thousand nine hundred and thirty-one and of our Independence the one hundred and fifty-sixth.

[Seal]

C. R. GARLOW
Clerk.

By C. G. KEGEL
Deputy Clerk.

[Endorsed]: Filed Dec. 7, 1931. [7]

District of Mont.,—ss.

I hereby certify and return, that on the 20th day of Oct., 1931. I received the within writ and that after diligent search, I am unable to find the within named defendants Harry Thompson within my district.

TOM BOLTON

United States Marshal.

By CURT DENNIS,

Deputy United States Marshal.

RETURN ON SERVICE OF WRIT

United States of America,

District of Mont.—ss:

I hereby certify and return that I served the annexed writ on the therein-named Douglas Parker by handing to and leaving a true and correct copy thereof with him personally at Sweet Grass in said District on the 21 day of Oct., A. D. 1931.

TOM BOLTON, U. S. Marshal,

By CURT DENNIS, Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,

District of Mont.—ss:

I hereby certify and return that I served the annexed writ on the therein-named John Marz by handing to and leaving a true and correct copy

thereof with him personally at Sweet Grass in said District on the 21 day of November., A. D. 1931.

TOM BOLTON, U. S. Marshal,
By CURT DENNIS, Deputy.

[Endorsed]: Filed Dec. 7, 1931. [8]

Thereafter, on November 25, 1931, Demurrer of the defendant John Mars was duly filed herein, in the words and figures following, towit: [9]

[Title of Court and Cause.]

DEMURRER

COMES NOW John Mars, one of the above named defendants, and DEMURS to the Complaint herein on file upon the following ground:

I.

That said Complaint does not state facts sufficient to constitute a cause of action against this defendant.

LOUIS P. DONOVAN

Attorney for defendant, John Mars. [10]

State of Montana
County of Toole—ss.

MARGARET POWERS, being first duly sworn on oath deposes and says:

That she is employed in the office of Louis P. Donovan, attorney for defendant, John Mars, in the

above entitled action, at Shelby, Montana; that on the 24th day of November, 1931 she served the foregoing DEMURRER upon Arthur P. Acher, Assistant United States Attorney, by mail, by depositing a true copy thereof in the United States Postoffice at Shelby, Montana, addressed to the said Arthur P. Acher, at Helena, Montana, postage thereon prepaid; that the said Louis P. Donovan resides and has his offices at Shelby, Montana, and that the said Arthur P. Acher resides and has his offices at Helena, Montana, and that there is a regular communication by mail between Shelby, Montana, and Helena, Montana.

MARGARET POWERS

Subscribed and sworn to before me this 24th day of November, A. D., 1931.

[Seal]

ETHEL M. MARTIN

Notary Public for the State of Montana

Residing at Shelby, Montana

My commission expires Feb. 24, 1932.

[Endorsed] : Filed Nov. 25, 1931. [11]

Thereafter, on April 13, 1933, court entered an order overruling the demurrer of defendant John Mars, in the words and figures following, towit: [12]

[Title of Court and Cause.]

ORDER OVERRULING DEMURRER

Good cause appearing the within demurrer is hereby overruled within ten days to answer upon receipt of notice hereof.

April 13th, 1933

CHARLES N. PRAY,
Judge.

[Endorsed] : Entered April 13th, 1933. [13]

That on November 10, 1931, Separate Demurrer of Douglas Parker was duly filed herein, in the words and figures following, towit: [14]

[Title of Court and Cause.]

DEMURRER

COMES NOW Douglas Parker, one of the above named defendants, and DEMURS to the Complaint herein on file upon the following ground:

I.

That said Complaint does not state facts sufficient to constitute a cause of action against this defendant.

LOUIS P. DONOVAN
Attorney for defendant, Douglas Parker. [15]

State of Montana

County of Toole—ss.

ETHEL M. MARTIN, being first duly sworn on oath deposes and says:

That she is employed in the office of Louis P. Donovan, the attorney for defendant, Douglas Parker, in the above entitled action, at Shelby, Montana; that on the 9th day of November, 1931 she served the foregoing DEMURRER on Arthur P. Acher, Assistant United States Attorney, by mail, by depositing a true copy thereof in the United States Postoffice at Shelby, Montana, addressed to the said Arthur P. Acher, Assistant United States Attorney, at Helena, Montana, postage thereon pre-paid; that the said Louis P. Donovan resides and has his offices at Shelby, Montana, and that the said Arthur P. Acher resides and has his offices at Helena, Montana, and that there is a regular communication by mail between Shelby, Montana and Helena, Montana.

ETHEL M. MARTIN

Subscribed and sworn to before me this 9th day of November, A. D. 1931.

[Notarial Seal]

LOUIS P. DONOVAN

Notary Public for the State of Montana.

Residing at Shelby, Montana.

My commission expires Aug. 5, 1934.

[Endorsed]: Filed Nov. 10, 1931. [16]

Thereafter, on April 13, 1933, court entered an order overruling the demurrer of defendant Douglas Parker, in the words and figures following, towit: [17]

[Title of Court and Cause.]

ORDER

Good cause appearing the within demurrer is hereby overruled with ten days to answer upon receipt of notice hereof.

April 13th, 1933.

CHARLES N. PRAY,
Judge.

[Endorsed]: Entered April 13th, 1933. [18]

Thereafter, on April 20, 1933, the Answer of defendants John Mars and Douglas Parker was duly filed herein, in the words and figures following, towit: [19]

[Title of Court and Cause.]

ANSWER

COME NOW the defendants, John Mars and Douglas Parker, and for their Answer to the Complaint herein, admit, deny and allege as follows:

I.

ADMIT that on or about the 12th day of May, 1930 a Decree was entered by the District Court of the United States for the District of Montana,

Great Falls Division, in a case therein pending, being Equity Case Number 1215, entitled "United States of America, plaintiff, vs. Ted Verburg and Harry Thompson, defendants"; but defendants DENY that said Decree was in the form set forth in plaintiff's Complaint herein, and ALLEGE that said Decree provided that the defendant, Harry Thompson, might reopen said premises, with the exception of the bar room, for legitimate hotel purposes if he shall pay all costs and give bond with sufficient surety to be approved by the office of the United States Attorney in the penal and liquidated sum of One Thousand Dollars, conditioned that the said premises shall be used for honest and legitimate hotel purposes, and that intoxicating *liquor* would not thereafter be manufactured, sold, bartered, kept or other- [20] wise disposed of in or on said premises, and that said premises would not be used or allowed to be used for or in violation of any of the provisions of the National Prohibition Act, and he would pay all fines, costs and damages that may be assessed for any violation of the National Prohibition Act upon said premises during the period of said bond. A full, true and correct copy of said Decree is hereto attached and marked Exhibit "A" hereof.

II.

These answering defendants further DENY that the said Decree was duly entered, in that at the time of entering said Decree in said suit against said defendants, the Court had no jurisdiction over the

said Harry Thompson, and the Court had not in any manner caused the said Harry Thompson to be served with a Subpoena in said action, or otherwise obtain jurisdiction over him, and the said Harry Thompson had not appeared in said action, nor in any manner submitted himself to the jurisdiction of said court, and the said Decree is null and void as against the said defendant, Harry Thompson. That at the time of the commencement of said suit, and at the time of the entry of said Decree, the said Harry Thompson was the sole owner of the premises described in Plaintiff's Complaint herein, and the said Ted Verburg named in said suit as co-defendant was not at the time of the commencement of said action or the entry of said decree, or at any other time or at all, an owner, lessee or tenant or occupant of said premises, and did not at any time have any right, title or interest in or to said premises, and that by reason thereof the Court was without jurisdiction to cause said decree in said suit to be entered, and said decree is and at all times was null and void.

III.

ADMIT that the defendants, John Mars and Douglas Parker, [21] made, executed and delivered to the plaintiff their joint and several bond to the United States of America in the penal and liquidated sum of One Thousand Dollars, and that said bond was duly approved and filed in the above entitled court on the 13th day of June, 1930, but these defendants DENY that the said Bond was made or

executed by the defendant, Harry Thompson, and these Defendants DENY that the said bond was conditioned as set forth in Paragraph 2 of the Complaint herein, and ALLEGE that the condition of said bond was to the effect that if the said Harry Thompson, his servants, agents, subordinates, employees, successors and assigns, shall well and faithfully adhere to the terms and conditions of the aforesaid decree, and shall use the above described premises for honest and legitimate hotel purposes, and should not thereafter manufacture, sell, barter, keep or otherwise dispose of or permit to be manufactured, sold, bartered, kept or otherwise disposed of intoxicating liquor in or on said premises, and should not use or allow to be used the said premises for or in violation of any of the provisions of the National Prohibition Act, and should pay all fines, costs and damages that may be assessed for any violation of the National Prohibition Act upon said premises for a period of one year from date of said bond, then said bond to be null and void and of no effect; otherwise to remain in full force and virtue. A full, true and correct copy of said bond, justification of sureties omitted, is hereto attached and marked Exhibit "B" hereof.

IV.

These answering defendants DENY the allegations contained in paragraphs 3 and 4 of said Complaint.

V.

Defendants DENY generally each and every al-

legation in plaintiff's Complaint herein contained, not herein specifically [22] admitted.

WHEREFORE, defendants, Douglas Parker and John Mars, pray that plaintiff take nothing by its Complaint herein, and that these answering defendants have judgment for their costs.

LOUIS P. DONOVAN
Attorney for Defendants, John Mars
and Douglas Parker.

State of Montana
County of Toole—ss.

DOUGLAS PARKER, being first duly sworn on oath deposes and says:

That he is one of the answering defendants named in the foregoing ANSWER, and makes this verification on his own behalf and for and on the behalf of his co-defendant, John Mars; that he has read the foregoing ANSWER, and knows the contents thereof, and that the same is true except as to the matters therein alleged on information and belief, and that as to those matters he believes it to be true.

DOUGLAS PARKER

SUBSCRIBED AND SWORN to before me this
17 day of April, A. D., 1933.

[Notarial Seal] J. B. SULLIVAN
Notary Public for the State of Montana.
Residing at Sweet Grass, Montana
My commission expires April 15, 1934. [24]

EXHIBIT "A"

District Court of the United States, District of
Montana
Great Falls Division
Equity No. 1215

United States of America,

Plaintiff,

vs.

Ted Verburg and Harry Thompson,

Defendants.

DECREE

THIS CAUSE came on regularly to be heard on the 8th day of May 1930, the United States of America being represented by Howard A. Johnson, Assistant United States Attorney for the District of Montana, and the defendants being represented by Molumby, Busha & Greenan, their attorneys, and thereupon, upon proof being submitted, and upon consideration thereof;

The Court found that all the allegations in the Bill in Equity herein are true, and that the premises described in the said bill were, on the date of filing said bill, a common nuisance, and it is now, therefore, hereby

ORDERED, ADJUDGED, AND DECREED that the defendant, Ted Verburg and Harry Thompson, their attorneys, agents, servants, employees, and all persons acting by, through, or under said defendants, and all other persons, be and they are hereby

restrained and enjoined from manufacturing, selling, keeping, or bartering any intoxicating liquor defined in Section 1, Title II, of the National Prohibition Act, upon the following-described premises:

That certain two-story brick building known as the Thompson Hotel, situated on Lots 3 and 4, Block 2, Original Townsite of Sweet Grass, in the county of Toole, in the state and district of Montana,

and from using said premises as a common and public nuisance as defined in Section 21, Title II, of the National Prohibition Act; and from using or occupying or permitting said premises to be used or [25] occupied for any purpose whatever for a period of one year from the date hereof, or until the further order of this Court;

PROVIDED, however, that the defendant Harry Thompson may reopen said premises, with the exception of the bar room, for legitimate hotel purposes, if he shall pay all costs and give bond with sufficient surety, to be approved by the office of the United States Attorney, in the penal and liquidated sum of One Thousand and no/100 Dollars (\$1,000.00), conditioned that said premises shall be used for honest and legitimate hotel purposes, and that intoxicating liquor will not hereafter be manufactured, sold, bartered, kept, or otherwise disposed of in or on said premises, and that said premises will not be used, or allowed to be used, for or in

violation of any of the provisions of the National Prohibition Act, and he will pay all fines, costs, and damages that may be assessed for any violation of the National Prohibition Act upon said premises during the period of said bond; and,

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the plaintiff recover from the defendants, Ted Verburg and Harry Thompson, its costs and disbursements herein expended, taxed in the sum of.....Dollars (\$.....); all costs incurred, and any and all costs incurring in enforcement hereof for the ensuing year, to be a lien on said premises. WITNESS the Honorable CHARLES N. PRAY, Judge of the above-entitled Court.

Dated this 12 day of May, 1930.

[Seal]

C. R. GARLOW,
Clerk of said court. [26]

EXHIBIT "B"

District Court of the United States, District of
Montana
Great Falls Division.

Equity No. 1215

United States of America,

Plaintiff,

vs.

Ted Verburg and Harry Thompson,

Defendants.

BOND

KNOW ALL MEN BY THESE PRESENTS:

That WHEREAS, Harry Thompson, one of the defendants above named is the owner of the hereinafter described property and premises and is desirous of continuing to occupy the same for legitimate hotel purposes;

NOW, THEREFORE, the undersigned, JOHN MARS, of Sweet Grass, Montana, and DOUGLAS PARKER, of Sweet Grass, Montana, real estate owners within the State of Montana, as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the penal and liquidated sum of One Thousand Dollars (\$1,000.00) lawful money of the United States for payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 31st day of May, A. D., 1930.

THE CONDITION of the above obligation is such that that certain two-story brick building known as the Thompson Hotel, situated on Lots Three (3) and Four (4) of Block Two (2) Original Townsite of Sweet Grass, in the County of Toole, in the State and District of Montana, with the exception of the bar room, shall be used for honest and legitimate hotel purposes and that intoxicating liquor will not hereafter be manufactured, sold, bartered, kept or otherwise disposed of in or on said premises, and that said [27] premises will not be used or allowed to be used for or in violation of any of the provisions of the National Prohibition Act, and the undersigned sureties will pay all fines, costs and damages that may be assessed for any violation of the National Prohibition Act upon said premises during a period of one (1) year from date hereof, and that the said Harry Thompson, his servants, agents, subordinates, employees and successors and assigns, shall well and faithfully adhere to all the terms and conditions of that certain Decree of the District Court of the United States, District of Montana, Great Falls Division, in the above entitled action made on the 12th day of May, 1930.

NOW, THEREFORE, if the said Harry Thompson, his servants, agents, subordinates, employees, successors and assigns, shall well and faithfully adhere to all the terms and conditions of the afore-

said decree and shall use the above described premises for honest and legitimate hotel purposes and shall not hereafter manufacture, sell, barter, keep or otherwise dispose of or permit to be manufactured, sold, bartered, kept or otherwise disposed of intoxicating liquor in or on said premises, and shall not use or allow to be used said premises for or in violation of any of the provisions of the National Prohibition Act, and shall pay all fines, costs and damages that may be assessed for any violation of the National Prohibition Act upon said premises for a period of one (1) year from date hereof, then this obligation to be null and void and of no effect, otherwise to remain in full force and virtue.

DOUGLAS PARKER
JOHN MARS

NOTE: (Justification of sureties omitted) [28]
State of Montana

County of Toole—ss.

ETHEL M. MARTIN, being first duly sworn on oath deposes and says:

That she is employed in the office of Louis P. Donovan, attorney for defendants, John Mars and Douglas Parker, at Shelby, Montana; that on the 18th day of April, 1933 she served the foregoing ANSWER of Mars and Parker upon Wellington D. Rankin, United States District Attorney, by mail, by depositing a true copy thereof in the United States Postoffice at Shelby, Montana addressed to

the said Wellington D. Rankin, at Helena, Montana, postage thereon prepaid;

That the said Louis P. Donovan resides and has his offices at Shelby, Montana, and that the said Wellington D. Rankin resides and has his offices at Helena, Montana, and that there is a regular communication by mail between Shelby, Montana, and Helena, Montana.

ETHEL M. MARTIN

Subscribed and sworn to before me this 18th day of April, A. D., 1933.

[Seal]

LOUIS P. DONOVAN

Notary Public for the State of Montana

Residing at Shelby, Montana.

My commission expires Aug. 5, 1934.

[Endosed]: Filed April 20, 1933. [29]

Thereafter, on November 2nd, 1934, the Verdict of the Jury was duly rendered and filed herein, being in the words and figures following, towit: [30]

[Title of Court and Cause.]

VERDICT

We, the Jury in the above entitled cause, do find our verdict herein in favor of the plaintiff and against the defendants in the sum of One Thousand Dollars.

G. H. PACKARD

Foreman.

[Endorsed]: Filed Nov. 2, 1934. [31]

Thereafter, on November 3rd, 1934, Judgment was duly entered herein, in the words and figures following, towit: [32]

In the District Court of the United States,
District of Montana
Great Falls Division.

No. 833

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARRY THOMPSON, JOHN MARZ and DOUG-
LAS PARKER,

Defendants.

JUDGMENT

This cause came on regularly to be heard on this 2nd day of November, 1934 in the above entitled cause before the Honorable Charles N. Pray, Judge of the said court, sitting with a jury of twelve persons duly and regularly impaneled and sworn to try the cause; the plaintiff was represented by James H. Baldwin, United States Attorney and R. Lewis Brown, Assistant United States Attorney, its counsel, and the defendants were present and represented by Louis P. Donovan, their counsel;

Thereupon evidence was introduced by and on behalf of the plaintiff and the plaintiff rested. Thereupon the defendant rested and thereupon and on motion of the plaintiff and by the advice of the

court, the Jury retired to its jury room and returned its verdict in the court for the plaintiff which said verdict is in words and figures as follows, to-wit:

(Title of Court and Cause)

Verdict

“We, the Jury in the above entitled cause, do find our verdict herein in favor of the plaintiff and against the defendants in the sum of One Thousand Dollars

G. H. PACKARD

Foreman.”

WHEREFORE, by reason of the law and the evidence and the verdict of the Jury as aforesaid

IT IS ORDERED, ADJUDGED AND DECREED, and this does order, adjudge and decree that the plaintiff above named, the United States [33] of America, do have and recover of and from the defendants above named, Harry Thompson, John Marz and Douglas Parker, and each of them, the sum of One Thousand (\$1000) Dollars, together with interest thereon amounting to \$209.97, and the plaintiff's costs herein incurred hereby taxed in the sum of \$38.70.

WITNESS the Honorable Charles N. Pray, Judge of the above entitled court this 3rd day of November, 1934.

C. R. GARLOW, Clerk,

By C. G. KEGEL, Deputy. [34]

Thereafter, on November 3, 1934, the Clerk, pursuant to the rule of said court, filed the Judgment Roll in said cause and annexed his certificate thereto in the words and figures following towit: [35]

[Title of Court and Cause.]

United States of America
District of Montana.—ss:

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

Witness my hand and seal of said Court this 3rd day of Nov., 1934.

[Seal]

C. R. GARLOW, Clerk,

By C. G. KEGEL, Deputy.

[Endorsed]: Filed November 3rd, 1934. [36]

Thereafter, on December 21, 1934, Bill of Exceptions was duly signed, settled and allowed and filed herein, being in the words and figures following, towit: [37]

[Title of Court and Cause.]

DRAFT OF BILL OF EXCEPTIONS

BE IT REMEMBERED that this cause came on for trial before the Honorable Charles N. Pray sitting with a jury, on the 2nd. day of November,

1934, the plaintiff being represented by J. H. Baldwin, Esquire, and R. Lewis Brown, Esq., and the defendant being represented by Louis P. Donovan, Esquire. Whereupon the following proceedings were had, to-wit:

A jury was impanelled to try the cause and Mr. Brown made a statement of the case for plaintiff.

THE COURT: Do you wish to make a statement now?

MR. DONOVAN: We reserve our statement, your Honor.

MR. BROWN: If the Court please, I offer the Judgment Roll in case number 1215 in Equity, United States, plaintiff, against Ted Verburg and Harry Thompson, defendants. It is in evidence. It is marked filed in this court on the 12th day of May, 1930, and Mr. Donovan has just assured me that he acknowledges these are the original papers, and that prevents calling of the Clerk to identify them.

MR. DONOVAN: We object to their introduction.

THE COURT: Overrule objection.

MR. DONOVAN: I desire to enter an objection here.

THE COURT: All right. Let the jury retire to the hall-way, and remain without the hearing of what transpires here. (Jury [38] leaves court room)

MR. DONOVAN: The defendants object to the introduction of the Judgment Roll, which is offered in evidence, upon the ground, first: that in the said

action this Court did not in any manner acquire any jurisdiction over the defendant, Harry Thompson, and did not serve him with any process of this court by publication, or personal service, or otherwise.

The defendants object to the introduction of any evidence in this case upon the ground the Complaint herein does not state facts sufficient to constitute a cause of action.

2. The defendants object to the sufficiency of the Complaint upon the grounds that it does not allege that the principal named in the bond, or the sureties thereon, have failed to pay any fine, costs or damages assessed for any violation of the National Prohibition Act by reason of unlawful acts committed on said property.

3. The complaint does not allege or show that any intoxicating liquor, during the term of said bond, was manufactured, sold, bartered, kept or otherwise disposed of therein or thereon or thereunder, and thereby the Complaint fails to show any breach of the condition of the bond.

4. That if the Complaint ever stated a cause of action the same was, and is, one to recover a penalty under the National Prohibition Act, and such cause of action failed and ceased to exist on the repeal of the Eighteenth Amendment to the Constitution of the United States in December, 1933.

5. That there is no allegations in the Complaint sufficient to show that the alleged acts of malice was a condition or a renewal of the alleged nuisance which was abated by the judgment of abatement in question and involved in that suit, and therefore,

such act of malice was not a breach of the condition of the bond in question. [39]

THE COURT: Your objection will be overruled. Bring in the jury.

MR. DONOVAN: Note an exception.

MR. BROWN: May this judgment roll be considered as read, and referred to by Counsel at any time they desire during argument, or otherwise, your Honor?

THE COURT: Yes.

Whereupon, the said Judgment Roll in Case No. 1215, in Equity, United States, plaintiff, vs. Ted Verburg and Harry Thompson, defendants, was received in evidence and is in words and figures as follows, to-wit: [40]

District Court of the United States, District of
Montana

Great Falls Division

No. 1215

United States of America,

Complainant,

vs.

Ted Verburg and Harry Thompson,

Defendants.

BILL IN EQUITY

To the Honorable, the Judge of the District Court of the United States, for the District of Montana, Sitting in Equity:

The complainant, the United States of America,

brings this its bill of complaint against the above-named defendants and respectfully shows unto this Honorable Court as follows:

1. The complainant, the United States of America, is a corporation sovereign, and this suit is prosecuted in its name and on its behalf by Howard A. Johnson, Assistant United States Attorney for the District of Montana, pursuant to authority thereto granted by Section 22, Title II, of the Act of Congress of October 28, 1919, known as the "National Prohibition Act," and for the purpose of enjoining and abating a certain public and common nuisance as defined in Section 21, Title II, of the said Act of Congress, as now existing upon certain premises situate within the State and District of Montana, more particularly described in that paragraph of this bill marked and numbered "III."

II. This is a suit of a civil nature arising under the Constitution and laws of the United States, and jurisdiction thereof is given to this Honorable Court by Section 22 of Title II of said Act of Congress, and by Section 24 of the Judicial Code of the United States.

III. The complainant is informed and verily believes and therefore alleges on information and belief that the following is a description of the premises (hereinafter referred to as "said premises") upon which said public and common nuisance exists:

That certain two-story brick building known as the Thompson Hotel, situated on Lot 3, and

4, Block 2, Original Townsite of Sweet Grass, in the County of Toole, in the State and District of Montana. [41]

IV. The complainant is informed and verily believes and therefore alleges on information and belief that the defendant, Harry Thompson, at and during all the times herein mentioned, was and now is the owner of the said premises and that the defendant TED VERBURG is the owner and proprietor of the business conducted on said premises: That the defendant, Ten Verburg, on or about the 7th day of September, 1929, wilfully, wrongfully and unlawfully, did, on said premises, have, keep and possess intoxicating liquor, to-wit, whiskey, gin and beer, in violation of Title II of the National Prohibition Act.

V. The complainant is informed and verily believes and therefore alleges on information and belief that said premises are now used and maintained as a place where intoxicating liquor as defined by Section 1 of Title II of said "National Prohibition Act," is sold and kept for sale for beverage purposes in violation of the provisions of said title by the defendants above named.

VI. The complainant is informed and verily believes and therefore alleges on information and belief that unless restrained and forbidden by the injunction of this Honorable Court, the said defendants will continue in the future to keep, maintain, and use said premises, and assist in maintaining and

using the same as a place where intoxicating liquor is manufactured, sold, kept, or bartered, in violation of Title II of said "National Prohibition Act," and as a common and public nuisance as defined in Section 21 of said title.

VII. Forasmuch, therefore, as your complainant has no remedy in the premises, except in a Court of Equity, and to the end that it may obtain from this Honorable Court the relief to which it is entitled by right and equity, and pursuant to the provisions of Section 22 of Title II of said "National Prohibition Act," it respectfully prays that the above-named defendants be directed, full, true, and perfect answer to make to this bill of complaint, but not under oath, answer under oath being hereby expressly waived, and that the said defendants, their agents, servants, subordinates, and employees, and each and every one of them, be enjoined and restrained from using, maintaining, and assisting in using and maintaining said premises as a place where intoxicating liquor is manufactured, sold, kept or bartered, in violation of Title II of said "National Prohibition Act." [42]

The complainant further prays that this Honorable Court shall issue its process directed to the United States Marshal for the District of Montana, commanding him forthwith summarily to abate said public and common nuisance now existing upon said premises and for that purpose to take possession of all liquor, fixtures, or other things now used on said premises in connection with the violation constituting said nuisance, and to remove the same to a

place for safe-keeping to abide the further order of this Court.

The complainant further prays that this Honorable Court shall enter a decree directing that all the intoxicating liquor now on said premises shall be destroyed, or, upon the application of the United States Attorney, shall be delivered to such department or agency of the United States Government as he shall designate, for medicinal, mechanical, or scientific uses, or that the same shall be sold at private sale for such purposes to any person having a permit to purchase liquor, and that the proceeds thereof be converted into the Treasury of the United States as provided in Section 27 of Title II of said "National Prohibition Act."

The complainant further prays that this Honorable Court shall enter a decree directing that no intoxicating liquor as defined in Title II of said "National Prohibition Act," shall be manufactured, sold, bartered, or stored in said premises, or any part thereof, and that said premises shall not be occupied or used for one year after the date of said decree, and in the event that it appears that the owner of said premises had knowledge or reason to believe that the same were occupied or used in violation of the provisions of Section 21 of Title II of said "National Prohibition Act," and suffered the same to be so occupied or used, that this Honorable Court shall enter a decree impressing a lien upon said premises, and directing that the same be sold to pay all costs and fines that may be assessed

or imposed against the person or persons found guilty of maintaining such nuisance.

The complainant further prays that it be granted a restraining order and temporary writ of injunction pending the final hearing and decision of this cause, whereby the said defendants, their agents, servants, subordinates, and employees, and each and every one of them, be enjoined and restrained from conducting or permitting the continu- [43] ance of said public and common nuisance upon the said premises and from removing or in any way interfering with the liquor or fixtures or other things upon said premises and in connection with the violation constituting said nuisance, and that upon final hearing the said injunction be made perpetual.

And complainant prays for such other and further relief as may be meet and just in the premises.

WHEREFORE, the complainant prays that a writ of subpoena issue herein directed to the above-named defendant commanding them on a day certain to appear and answer this bill of complaint.

UNITED STATES OF AMERICA,
Complainant.

UNITED STATES ATTORNEY FOR
THE DISTRICT OF MONTANA.

By HOWARD A. JOHNSON,
Assistant United States Attorney.

United States of America
State of Montana
District of Montana—ss:

Howard A. Johnson, being duly sworn, deposes and says: That he is Assistant United States Attorney for the District of Montana, and is in charge of this action. Deponent has read the foregoing bill of complaint and knows the contents thereof. Deponent is informed and verily believes that each of the allegations therein is true.

The sources of deponent's information and the grounds of his belief are based on an official report made to the United States Attorney relating to the matters and premises averred in the Bill of Complaint by O. K. Nickerson, Acting Federal Prohibition Administrator.

HOWARD A. JOHNSON

Subscribed and sworn to before me this 17 day of Sept. 1929.

[Seal]

ARTHUR P. ACHER

Notary Public for the State of Montana,
Residing at Helena, Montana.

My Commission Expires June 30th, 1930.

[Endorsed]: Filed Sept. 18th, 1929. [44]

[Title of Court and Cause—No. 1215.]

SUBPOENA IN EQUITY

United States District Court,
District of Montana

The President of the United States of America
To Ted Verburg, Harry Thompson—Greeting:

YOU ARE HEREBY COMMANDED that all excuses and delays set aside you be and appear within twenty days after the service of this subpoena at the Clerk's office of the United States District Court for the District of Montana, at Great Falls, Montana, to answer unto the bill of complaint of The United States of America in said Court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

WITNESS the Honorable Charles N. Pray
United States District Judge at Great Falls
this 23rd day of September A. D. 1929.

[Seal]

C. R. GARLOW

Clerk.

MÉMORANDUM

The Defendant in this case required to file answer or other defense in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken *pro confesso*.

W. D. Rankin, U. S. Attorney
Helena, Mont.

[Endorsed]: Filed Nov. 4, 1929. [45]

District of Montana, ss.

I hereby certify and return, that on the 25 day of Sept., 1929 I received the within writ and that after diligent search, I am unable to find the within named defendants Harry Thompson within my district.

TOM BOLTON
United States Marshal.

RETURN ON SERVICE OF WRIT

United States of America,
District of Montana.—ss:

I hereby certify and return that I served the annexed Subpoena in Equity on the therein-named Ted Verburg by handing to and leaving a true and correct copy thereof with him personally at Sweet Grass in said District on the 19th day of October, A. D. 1929.

TOM BOLTON
U. S. Marshal. [46]

[Title of Court and Cause—No. 1215.]

MOTION TO DISMISS

COMES NOW the above named Ted Verburg and MOVES TO DISMISS the Plaintiff's Bill in Equity herein upon the following grounds, to-wit:

1: That the said Bill in Equity does not state facts sufficient to constitute a valid cause in equity.

2: That the action has not been brought by the attorney general, or by any United States attorney, or any prosecuting attorney of any state, or any subdivision thereof, or by the Commissioner or his deputies or assistants.

3: That no service of summons has been obtained upon the owner of the premises sought to be abated, and the Court has not otherwise obtained jurisdiction of said owner.

HENRY McCLERNAN

Attorney for the defendant, Ted Verburg.

[Endorsed]: Filed Nov. 7, 1929. [47]

[Title of Court and Cause—No. 1215.]

ANSWER

COMES NOW the defendant Ted Verburg, and in answer to the allegations contained in the Bill in Equity on file herein, admits, denies and alleges as follows:

-1-

Admits the allegations contained in paragraphs one and two of said Bill in Equity on file herein.

-2-

In answer to the allegations contained in paragraph three of said Bill in Equity, this answering defendant denies each and every allegation in said paragraph contained.

-3-

In answer to the allegations contained in paragraph Four of said Bill in Equity, this answering

defendant admits that Harry Thompson, at all the times mentioned in said Bill in Equity, was the owner of said premises and that Ted Verburg, on or about the 7th day of September, 1929, unlawfully kept and possessed intoxicating liquor, to-wit: whiskey, gin and beer, in violation of Title II of the National Prohibition Act, in one room of said premises and denies each and every other allegation in said paragraph contained.

-4-

In answer to the allegations contained in paragraph Five of said Bill in Equity, this answering defendant denies each and every allegation in said paragraph contained. [48]

-5-

In answer to the allegations contained in paragraph Six of said Bill in Equity, this answering defendant denies each and every allegation in said paragraph contained.

-6-

In answer to the allegations contained in paragraph Seven of said Bill in Equity, the answer under oath having been duly and expressly waived by the complainant in their Bill in Equity, this answering defendant prays that he be dismissed hence and that said Bill in Equity be dismissed and that the complainant take nothing thereby.

Dated this 8th day of May, 1930.

HENRY McCLERNAN

Attorney for defendant, Ted Verburg.

[Endorsed] : Filed May 8th, 1930. [49]

[Title of Court and Cause—No. 1215.]

DECREE

THIS CAUSE came on regularly to be heard on the 8th day of May 1930, the United States of America being represented by Howard A. Johnson, Assistant United States Attorney for the District of Montana, and the defendants being represented by Molumby, Busha & Greenan, their attorneys, and thereupon, upon proof being submitted, and upon consideration thereof;

The Court found that all the allegations in the Bill in Equity herein are true, and that the premises described in the said bill were, on the date of filing said bill, a common nuisance, and it is now, therefore, hereby

ORDERED, ADJUDGED, AND DECREED that the defendant, Ted Verburg and Harry Thompson, their attorneys, agents, servants, employees, and all persons acting by, through, or under said defendants, and all other persons, be and they are hereby restrained and enjoined from manufacturing, selling, keeping, or bartering any intoxicating liquor as defined in Section 1, Title II, of the National Prohibition Act, upon the following-described premises:

That certain two-story brick building known as the Thompson Hotel, situated on Lots 3 and 4, Block 2, Original Townsite of Sweet Grass, in the county of Toole, in the state and district of Montana,

and from using said premises as a common and public nuisance as defined in Section 21, Title II, of the National Prohibition Act; and from using or occupying or permitting said premises to be used or occupied for any purpose whatever for a period of one year from the date hereof, or until the further order of this Court; [50]

PROVIDED, however, that the defendant Harry Thompson may reopen said premises, with the exception of the bar room, for legitimate hotel purposes, if he shall pay all costs and give bond with sufficient surety, to be approved by the office of the United States Attorney, in the penal and liquidated sum of One Thousand and no/100 Dollars (\$1,000.00), conditioned that said premises shall be used for honest and legitimate hotel purposes, and that intoxicating liquor will not hereafter be manufactured, sold, bartered, kept, or otherwise disposed of in or on said premises, and that said premises will not be used, or allowed to be used, for or in violation of any of the provisions of the National Prohibition Act, and he will pay all fines, costs, and damages that may be assessed for any violation of the National Prohibition Act upon said premises during the period of said bond; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff recover from the defendants Ted Verburg and Harry Thompson, its costs and disbursements herein expended, taxed in the sum of Dollars (\$27.73); all costs incurred, and any and all costs incurring in en-

forcement hereof for the ensuing year, to be a lien on said premises.

WITNESS the Honorable CHARLES N. PRAY, Judge of the above-entitled Court.

Dated this 12th day of May, 1930.

C. R. GARLOW,
Clerk of said court.

[Endorsed]: Filed May 12, 1930. [51]

United States of America,
District of Montana.—ss:

I, C. R. GARLOW, Clerk of the United States District Court for the District of Montana, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

WITNESS my hand and seal of said Court this 12th day of May, 1930.

C. R. GARLOW, Clerk,
By C. G. KEGEL, Deputy.

[Endorsed]: Filed May 12, 1930. [52]

MR. BROWN: I now offer in evidence the Writ of Injunction in Cause Number 1215 of this court, and marked filed in this Court on June 12, 1930.

MR. DONOVAN: We object to the document offered in evidence on the ground the Court has no jurisdiction over the defendant, Harry Thompson, or over the sureties, or any parties to this action.

THE COURT: Overrule objection.

MR. DONOVAN: Note an exception.

THEREUPON, said Writ of Injunction in Cause No. 1215 of this Court and marked and filed in this court on June 12, 1930 was received in evidence and is in words and figures as follows, to-wit: [53]

District Court of the United States
District of Montana
Great Falls Division
Equity No. 1215

United States of America,

Plaintiff,

vs.

Ted Verburg and Harry Thompson,

Defendants.

WRIT OF INJUNCTION

To Ted Verburg, and Harry Thompson, their servants, agents, subordinates, employees, and each and every one of them, and all persons acting in aid of, or in connection with them, or any of them, and all other persons whomsoever—Greeting:

WHEREAS, the United States of America, Plaintiff in the above-entitled cause, has filed its Bill in Equity in the District Court of the United States for the District of Montana, and has obtained an allowance of an injunction against the above-named defendant , as prayed for in said bill;

NOW, THEREFORE, WE, having regard to the matters in said bill contained, do hereby command and strictly enjoin you, the said Ted Verburg and Harry Thompson, your servants, agents, subordinates, and employees, and each and every one of you, and all other persons, from manufacturing, selling, keeping, or bartering any liquor containing more than one-half of one per cent of alcohol by volume, upon the following-described premises:

That certain two-story brick building known as the Thompson Hotel, situated on Lots 3 and 4, Block 2, Original Townsite of Sweet Grass, in the county of Toole, in the state and district of Montana,

and from maintaining said premises as a common and public nuisance as defined in Section 21, Title II of the National Prohibition Act; and from using or occupying or permitting said premises to be used or occupied for any purpose whatever for a period of one year from the date hereof, or until the further order of this Court.

Provided, however, that the defendant Harry Thompson may reopen said premises, with the exception of the bar room, for legitimate hotel purposes, if he shall pay all costs and give bond with sufficient surety in the sum of \$1,000.00, conditioned as provided in the decree on file herein.

WITNESS, the Honorable Charles N. Pray,

Judge of the United States District Court for the District of Montana, this 12th day of May, 1930.

[Seal]

C. R. GARLOW,
Clerk, United States District Court,
District of Montana.

By
Deputy.

[Endorsed]: Filed June 12, 1930. [54]

District of Mont.—ss.

I hereby certify and return, that on the 28 day of May, 1930 I received the within writ and that after diligent search, I am unable to find the within named defendants Harry Thompson within my district.

Defend resides at 404 E. Pike St. Seattle Wash.

TOM BOLTON
United States Marshal

By CURT DENNIS
Deputy United States Marshal.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Mont.—ss:

I hereby certify and return that I served the annexed writ on the therein-named Ted Verburg I also posted a copy of the writ on the premises at the same time by handing to and leaving a true

and correct copy thereof with him personally at Sweet Grass in said District on the 29 day of May, A. D. 1930.

TOM BOLTON

U. S. Marshal.

By CURT DENNIS, Deputy.

[Endorsed]: Filed June 12, 1930. [55]

MR. BROWN: I now offer in evidence, if the Court please, the Bond filed in Equity Cause Number 1215 of this court, marked "Approved, June 12, 1930", and marked "Filed June 13, 1930", by the Clerk of the Court.

THE COURT: Same objection Senator?

MR. DONOVAN: May I look at the bond? Same objection.

THE COURT: Same ruling.

MR. BROWN: May we have a like order, your Honor, with reference to the Injunction and Bond, that they be considered read, and referred to by Counsel?

THE COURT: Very well.

THEREUPON, said Bond filed in Equity Cause No. 1215 of this Court, marked "Approved June 12, 1930" and marked "filed June 13, 1930" was received in evidence and is in words and figures as follows, to-wit: [56]

District Court of the United States,
District of Montana,
Great Falls Division

Equity No. 1215

United States of America,

Plaintiff,

vs.

Ted Verburg and Harry Thompson,

Defendants.

BOND

KNOW ALL MEN BY THESE PRESENTS:

That WHEREAS, Harry Thompson, one of the defendants above named is the owner of the hereinafter described property and premises and is desirous of continuing to occupy the same for legitimate hotel purposes;

NOW, THEREFORE, the undersigned, John Mars, of Sweet Grass, Montana, and DOUGLAS PARKER, of Sweet Grass, Montana, real estate owners within the State of Montana, as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the penal and liquidated sum of One Thousand Dollars (\$1,000.00) lawful money of the United States for payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

IN WITNESS WHEREOF, we have hereunto

set our hands and seals this 31st. day of May, A. D., 1930.

THE CONDITION of the above obligation is such that that certain two-story brick building known as the Thompson Hotel, situated on Lots Three (3) and Four (4) of Block Two (2) Original Townsite of Sweet Grass, in the County of Toole, in the State and District of Montana, with the exception of the bar room, shall be used for honest and legitimate hotel purposes and that intoxicating liquor will not hereafter be manufactured, sold, bartered, kept or otherwise disposed of in or on said premises, and that said premises will not be used or allowed to be used for or in violation of any of the provisions [57] of the National Prohibition Act, and the undersigned sureties will pay all fines, costs and damages that may be assessed for any violation of the National Prohibition Act upon said premises during a period of one (1) year from date hereof, and that the said Harry Thompson, his servants, agents, subordinates, employees and successors and assigns, shall well and faithfully adhere to all the terms and conditions of that certain Decree of the District Court of the United States, District of Montana, Great Falls Division, in the above entitled action made on the 12th day of May, 1930.

NOW, THEREFORE, if the said Harry Thompson, his servants, agents, subordinates, employees, successors and assigns, shall well and faithfully adhere to all the terms and conditions of the afore-

said decree and shall use the above described premises for honest and legitimate hotel purposes and shall not hereafter manufacture, sell, barter, keep or otherwise dispose of or permit to be manufactured, sold, bartered, kept or otherwise disposed of intoxicating liquor in or on said premises, and shall not use or allow to be used said premises for or in violation of any of the provisions of the National Prohibition Act, and shall pay all fines, costs and damages that may be assessed for any violation of the National Prohibition Act upon said premises for a period of one (1) year from date hereof, then this obligation to be null and void and of no effect, otherwise to remain in full force and virtue.

JOHN MARS
DOUGLAS PARKER.

State of Montana
County of Toole—ss.

JOHN MARS, of Sweet Grass, Montana, and DOUGLAS PARKER, of Sweet Grass, Montana, whose names are subscribed as sureties to the foregoing bond, being severally duly sworn, each for himself says:

That he is a resident of and freeholder within the State of Montana, and that he is worth the sum of One Thousand Dollars (\$1,000.00) over and above all his just debts and liabilities in property subject to execution and sale, to-wit:

As to the said John Mars the following described property: [58]

West half of Section (7) Seven of Township 36
—Rang 1 west M. M. in Toole County, Montana.

As to the said Douglas Parker, the following de-
scribed property:

In Section 31, Township 32, Range 1 W.

JOHN MARS
DOUGLAS PARKER

Subscribed and sworn to before me this 31st. day
of May, 1930.

[N. Seal]

J. B. SULLIVAN

Notary Public for the State of Montana.
Residing at Sweet Grass, Montana.

My commission expires April 15, 1931.

Approved June 12, 1930. Arthur P. Acher, Ass't.
U. S. Attorney.

[Endorsed]: Filed June 13—1930. [59]

MR. BROWN: I now offer in evidence the
Judgment Roll in the case of United States of
America against Everett Knause, and marked, be-
ing the original papers of this Court, marked,
“Filed May 8, 1931” by the Clerk of this Court.

MR. DONOVAN: To which offer the defendants
object on the ground they are irrelevant and im-
material, and the defendants in this action are not
parties to said judgment. The same is not in any
manner binding on either one of them or against
them.

THE COURT: Overrule objection.

MR. DONOVAN: Note an exception.

WHEREUPON, said Judgment Roll in the case of United States of America against Everett Knaus was received in evidence and is in words and figures as follows, to-wit:

District Court of the United States
District of Montana
Great Falls Division
No. 3894

United States of America,

Plaintiff.

vs.

Everett Knouse,

Defendant.

INFORMATION

BE IT REMEMBERED, that Howard A. Johnson, Assistant United States Attorney for the District of Montana, on behalf of the United States, comes into the District Court of the United States for the District of Montana, and informs the Court on this 27th day of April, 1931:

FIRST COUNT (Possession)

That on or about the 16th day of April, 1931, one Everett Knouse, whose true name is to the informant unknown, at and within those certain premises known as the Thompson Hotel, in the town of Sweet Grass, in the County of Toole, in the State and District of Montana, and within the jurisdiction of this

Court, did then and there wrongfully and unlawfully have and possess intoxicating liquor, to wit, whiskey, wine and beer, the exact quantity and character of which are to the informant unknown, intended for use in violation of the National Prohibition Act; contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the United States of America. [61]

That prior to the commission by the said defendant Everett Knouse of the offense set forth and described in manner and form aforesaid, to wit, on the 10th day of May, 1930, the defendant Everett Knouse was, by a judgment duly given and made by the District Court of the United States for the District of Montana, Great Falls Division, in a case then and therein pending, being case No. 2593, entitled United States of America, plaintiff, vs. Everett Knouse and C. J. Quisberg, defendant, convicted of the crime of unlawfully possessing intoxicating liquor in violation of the Act of Congress known as the National Prohibition Act. [62]

SECOND COUNT.

(Nuisance)

And the informant aforesaid further gives the Court to understand and be informed:

That on or about the 16th day of April, 1931, one Everett Knouse, whose true name is to the informant unknown, at and within those certain premises described in Count One hereof, did then and there wrongfully and unlawfully maintain a common

nuisance, that is to say, a place where intoxicating liquor was possessed and kept in violation of Title II of the National Prohibition Act; contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the United States of America.

HOWARD A. JOHNSON,
Assistant United States Attorney for
the District of Montana. [63]

HOWARD A. JOHNSON, being first duly sworn, on oath, deposes and says:

That he is a duly appointed, qualified, and acting Assistant United States Attorney for the District of Montana, and as such makes this verification to the foregoing information; that he has read the said information and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

HOWARD A. JOHNSON

Subscribed and sworn to before me this 27th day of April, 1931.

[Seal]

MARJORIE McLEOD

Notary Public for the State of Montana,
Residing at Helena, Montana.

My Commission expires March 31st, 1934.

[Endorsed]: Filed April 27, 1931. [64]

[Title of Court and Cause—No. 3894.]

Great Falls, Montana

April 21, 1931

United States of America

District of Montana—ss

AFFIDAVIT

N. E. BAYNHAM, being first duly sworn upon his oath deposes and says, as follows, to-wit:

That he now is and at all times herein mentioned, a duly appointed, qualified and acting Customs Patrol Inspector, and assigned to duty as such in the District of Montana and Idaho;

That upon the 16th day of April, 1931, at about the hour of 8 P. M., he was at and within those certain premises at Sweet Grass, Montana, commonly known as the Thompson Hotel, occupied by one Everett Knaus as proprietor of the said hotel;

That in company with J. E. Libby, James Buckley and James C. Lee, Customs Patrol Inspectors for the District of Montana and Idaho, acting upon authority and permission of Everett Knaus, proprietor of the said hotel, they made a search of his hotel and found, one quart of moonshine whiskey, one quart of wine and three quarts of Fernie Beer, in the basement of the said hotel, the liquor found was retained for evidence, Everett Knaus was ordered to appear before the U. S. Commissioner and

furnish a bond to appear before the U. S. District Court at Great Falls.

N. E. BAYNHAM
Customs Patrol Inspector

Subscribed and sworn to before me this 21st day of April, 1931.

[Seal] CHAS. L. SHERIDAN
Collector of Customs.

[Endorsed]: Filed April 27, 1931. [65]

[Title of Court and Cause—No. 3894]

BENCH WARRANT.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA

To the Marshal for the District of Montana,
GREETING:

YOU ARE HEREBY COMMANDED that you apprehend Everett Knouse and him immediately have before the United States District Court for the District of Montana, at Great Falls, Montana, to answer unto an information charging him with violation of the National Prohibition Act, contrary to the form of the Statute in such case made and provided, and against the peace, government, and dignity of the United States. Hereof you are not to

fail at your peril, and have you then and there this writ.

[Seal] WITNESS the Honorable CHARLES N. PRAY, United States District Judge at Great Falls, Montana, this 27th day of April, A. D. 1931.

C. R. GARLOW, Clerk,

By C. G. KEGEL,

Deputy Clerk.

UNITED STATES MARSHAL'S RETURN

District of Mont.—ss.

Received the within writ the 1st day of May, 1931, and executed same on the 2nd day of May 1931 by arresting the within named defendant at Sweet Grass Mont.

\$300.00 bond Furnished.

TOM BOLTON

United States Marshal

By CURT DENNIS

Deputy Marshal.

[Endorsed]: Filed May 8, 1931 [66]

[Title of Court and Cause—No. 3894]

JUDGMENT.

Counsel for respective parties, with the defendant, present as before and trial of cause resumed. Thereupon C. J. Nichols, S. W. Simeron and C. Hauskin were sworn and examined as witnesses for

defendant, whereupon defendant rested. Thereupon J. Q. Adams and Howard A. Johnson were sworn and testified in rebuttal, and J. E. Libby and James Buckley were recalled and testified in rebuttal, whereupon the evidence closed. Thereupon, after the arguments of counsel, the cause was submitted to the court.

Thereupon, after due consideration, Court finds the defendant guilty as charged, and rendered its judgment as follows, to wit:

That whereas the said defendant having been duly convicted in this court of the second offense of unlawfully possessing intoxicating liquor, and the offense of maintaining a common nuisance, in violation of the National Prohibition Act, committed on April 16, 1931, at Sweet Grass, in the State and District of Montana, as charged in the information herein;

It is therefore considered, ordered and adjudged that for said offense you, the said defendant, be confined and imprisoned in the county jail at Great Falls, Montana, for the term of Six Months, which is suspended and defendant placed upon probation for the period of five years, and that you pay a fine of One Hundred Dollars and be confined in said county jail until said fine is paid or you are otherwise discharged according to law.

Judgment rendered and entered May 8th, 1931.

C. R. GARLOW, Clerk,

By H. H. WALKER, Deputy. [67]

United States of America
District of Montana.—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

Witness my hand and seal of said Court this
May 8, 1931.

[Seal]

C. R. GARLOW, Clerk,

By H. H. WALKER, Deputy.

[Endorsed]: Filed May 8, 1931. [68]

MR. BROWN: If the Court please, we offer in evidence the Judgment Roll in Cause Number 2593, United States of America against Everett Knaus and C. J. Wisberg, and being marked as having been filed in this court on the 10th day of May, 1930.

MR. DONOVAN: I object to this on the ground that it is irrelevant and immaterial to any issue in this case. The defendants herein are not parties to it, and the acts therein charged have no relation to the period that the bond was in force, and the entire Judgment Roll proves no issue in this case.

THE COURT: Overrule Objection.

MR. DONOVAN: Note an exception.

WHEREUPON, said Judgment Roll in the case of United States of America against Everett Knaus

and C. J. Wisberg, was received in evidence and is in words and figures as follows, to-wit: [69]

District Court of the United States
District of Montana
Great Falls Division

No. 2593

United States of America,

Plaintiff,

vs.

Everett Knouse and C. J. Quisberg,

Defendants.

INDICTMENT

In the January, 1930 term of the above-entitled Court, held at the city of Helena, in the State and District of Montana, the Grand Jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the District of Montana and true presentment make of all public offenses against the laws of the United States within the said State and District, upon their oaths and affirmations do find, charge, and present:

FIRST COUNT

(Sale)

That on or about the 20th day of October, 1929, one Everett Knouse and C. J. Quisberg, whose true names are to the Grand Jurors aforesaid unknown, at and within that certain two-story brick building, known as the "Thompson Hotel" and

operated by the defendant Everett Knouse, and located on Lots 3 and 4, Block 2, Sweet Grass Original Townsite, in the County of Toole, in the State and District of Montana, and within the jurisdiction of this Court, did then and there wrongfully and unlawfully sell intoxicating liquor, to wit, whiskey, the exact quantity and character of which are to the Grand Jurors aforesaid unknown, without then and there first obtaining a permit from the Secretary of the Treasury, or the Commissioner of Internal Revenue, or the Commissioner of Prohibition, or the Prohibition Administrator for the Nineteenth Prohibition District, so to do; contrary to the form force and effect of the statute in such case made and provided, and against the peace and dignity of the United States of America. [70]

SECOND COUNT
(Possession Liquor)

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge and present:

That on or about the 20th day of October, 1929 one Everett Knouse and C. J. Quisberg, whose true names are to the Grand Jurors aforesaid unknown, at and within that certain two-story, brick building, known as the "Thompson Hotel" and operated by the defendant Everett Knouse, and located on Lots 3 and 4, Block 2, Sweet Grass Original Townsite, in the County of Toole, in the State and District of Montana, and within the jurisdiction of this

Court, did then and there wrongfully and unlawfully have and possess intoxicating liquor, to wit whiskey, beer, gin and Cognac, intended for use in violation of Title II of the National Prohibition Act; contrary to the form, force and effect of the Statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT

(Nuisance)

And the Grand Jurors aforesaid upon their oaths and affirmations aforesaid, do further find, charge, and present:

That on or about the 20th day of October, 1929, one Everett Knouse and C. J. Quisberg, whose true names are to the Grand Jurors aforesaid unknown, at and within that certain two-story brick building, known as the "Thompson Hotel" and operated by the defendant Everett Knouse, and located on Lots 3 and 4, Block 2, Sweet Grass Original Townsite, in the County of Toole, in the State and District of Montana, and within the jurisdiction of this Court, did then and there wrongfully and unlawfully maintain a common nuisance, that is to say, a place where intoxicating liquor was sold and kept in violation of Title II of the National Prohibition Act; contrary to the form, force and effect of the Statute in such case made and provided, and against the peace and dignity of the United States of America.

WELLINGTON D. RANKIN

United States Attorney for

the District of Montana. [71]

[Title of Court and Cause—No. 2593.]

INDICTMENT

A true bill,

ADDISON K. LUSK,
Foreman.

Filed in open Court this 7th day of Jan., A. D. 1930. C. R. Garlow, Clerk, By H. L. Allen, Deputy.

Bail, Knouse on \$500.00

Bond Quisberg fixed \$300.00. [72]

—

[Title of Court and Cause—No. 2593.]

JUDGMENT.

The United States Attorney with the defendants and their counsel, L. J. Molumby, Esq., present in court.

Thereupon the defendants withdrew their former pleas of not guilty heretofore entered herein, and each defendant entered a plea of guilty as charged and the court rendered its judgment as follows, to wit:

That whereas the said defendants having been duly convicted in this court of unlawfully selling and possessing intoxicating liquor and maintaining a common nuisance in violation of the National Prohibition Act, committed on October 20, 1929 at Sweet Grass, Montana, as charged in the Indictment herein;

It is therefore considered, ordered and adjudged that for said offense you, the said defendant EVERETT KNOUSE be confined and imprisoned in the

County Jail at Great Falls, Montana, for the term of Sixty Days, and that you pay a fine of One Hundred Twenty-five Dollars, on Counts One and Two of said Indictment; and that on Count three of said Indictment you be confined and imprisoned in the County Jail at Great Falls, Montana, for the term of FOUR MONTHS, which is suspended and defendant placed upon probation for the period of four years.

And it is considered, ordered and adjudged that for said offense you, the said defendant C. J. QUISBERG be confined and imprisoned in the County Jail at Great Falls, Montana, for the term of Thirty Days, and pay a fine of Fifty Dollars, on counts One and Two of said Indictment; and that on Count Three of said Indictment you be confined and imprisoned in the said county jail for the term of NINETY DAYS, which is suspended and defendant placed upon probation for the period of three years.

Thereupon defendant Knouse was granted a stay of commitment to May 16, 1930.

Judgment rendered and entered May 10, 1930.

C. R. GARLOW, Clerk,

By C. G. KEGEL, Deputy. [73]

United States of America
District of Montana—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify that the foregoing papers hereto annexed

constitute the Judgment Roll in the above-entitled action.

WITNESS my hand and seal of said Court this May 10, 1930.

[Seal]

C. R. GARLOW, Clerk,

By C. G. KEGEL, Deputy.

[Endorsed] : Filed May 10—1930 [74]

MR. BROWN: We rest.

MR. DONOVAN: May it please the Court; I would like to make a motion.

THE COURT: Very well. Gentlemen, you may retire to the hall way while we discuss a proposition of law. (Whereupon the Jury left the court room).

MR. DONOVAN: Comes now the defendant, Harry Thompson, and moves the Court for a judgment for non-suit upon the following grounds, and for the following reasons:

1. That the Complaint herein does not state facts sufficient to constitute a cause of action.

2. That the evidence introduced herein does not prove a breach of the continuance of the bond.

3. The evidence introduced herein is wholly insufficient to show that the principal or sureties, named in the bond, failed to pay any or all fines, costs or damages assessed for any violation of the National Prohibition Act upon said property. The evidence is insufficient in that it fails to show there was any act committed on the property which revived the nuisance abated by the judgment in the

abatement suit, or constituted a continuation of that nuisance.

On the further ground, this action is one to recover a penalty under the National Prohibition Act and that the repeal of the National Prohibition Act in December of last year, upon repeal of the Eighteenth Amendment to the Constitution, abated the action and destroyed all right of action, if any theretofore existing.*

The defendants, Mars and Parker, move for a judgment of non-suit upon the same grounds specified in the motion for non-suit of Harry Thompson.

THE COURT: The several motions are denied. Call in the jury. [75]

MR. DONOVAN: May it please the Court: At this time I ask an exception to the Court's ruling on each of these motions for a non-suit.

THE COURT: Let the exception be noted.

MR. DONOVAN: Defendants rest.

MR. BALDWIN: We now ask that the jury be directed to return a verdict for the plaintiff, your Honor.

THE COURT: It seems there is nothing else to do, except advise the jury to return a verdict for the plaintiff.

MR. DONOVAN: Note an exception to the ruling of the Court.

THE COURT: Gentlemen of the Jury; At this point it now becomes a matter of law for the Court to advise as to what you are to do in this case. The Court advises you that under the evidence presented here it becomes a matter of law for the Court to

advise you to return a verdict for the Plaintiff. You may retire, or you may sign your verdict there.

MR. DONOVAN: I don't know whether this is in order, to except to this.

THE COURT: Yes, you may take your exception.

MR. DONOVAN: I wish to take an exception to the Court directing a verdict for the Plaintiff.

THE COURT: Yes, you may take an exception.

MR. DONOVAN: Note an exception.

THE COURT: The jury may retire and select a Foreman to sign the verdict in the usual way.

MR. DONOVAN: May we have sixty days in addition to the time allowed by the Rules of Court in which to prepare and serve a Bill of Exceptions?

MR. BALDWIN: No objection, your Honor.

THE COURT: Sixty days in addition to the time allowed by law. [76]

AND NOW, the defendants, within the time allowed by law and the Order of the Court herein, serve and present their draft of Bill of Exceptions herein and ask that the same be settled and allowed by the above entitled court as a Bill of Exceptions herein.

LOUIS P. DONOVAN

Attorney for Defendants.

SERVICE of the foregoing draft of defendants' Bill of Exceptions and receipt of copy thereof acknowledged, this 8 day of December, A. D., 1934.

R. LEWIS BROWN

Asst. U. S. Attorney

Attorneys for Plaintiff. [77]

CERTIFICATE OF JUDGE TO BILL OF
EXCEPTIONS.

THIS IS TO CERTIFY that the foregoing Bill of Exceptions tendered by the defendant, is correct in every particular and is hereby settled and allowed as the bill of exceptions herein, and made a part of the record in this cause, and that said bill of exceptions was lodged with this Court and hereby settled and allowed within the time allowed by law and the Order of this Court, and at the same term.

Dated: December 21st, 1934.

CHARLES N. PRAY
Judge.

Lodged in Clerk's office on Dec. 20—1934

[Endorsed]: Filed Dec 21—1934 [78]

Thereafter, on December 20th, 1934, Petition for Appeal was duly filed herein, in the words and figures following, to wit: [79]

[Title of Court and Cause.]

PETITION FOR APPEAL

COME NOW the defendants, Harry Thompson, John Mars and Douglas Parker, and respectfully petition this Court, and show:

That under date the 3rd day of November, 1933 there was entered in the above entitled court and cause a Judgment in favor of the plaintiff, United States of America, and against the defendants,

Harry Thompson, John Mars (name erroneously spelled "Marz") and Douglas Parker, the said judgment being in the amount of \$1,000.00, together with interest thereon amounting to \$209.97 and costs; in which said Judgment and proceedings had prior thereto in this cause certain manifest errors were committed to the grievous prejudice of the defendants, and each of them, all of which will more fully appear in detail from the Assignment of Errors filed with this Petition;

WHEREFORE, these defendants, feeling aggrieved by said Judgment, petition and pray this Court for an order allowing said defendants to prosecute an appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided for the correction of errors or the reversal of the judgment erroneously entered; That an order be made fixing the amount of supersedeas bond [80] on appeal as may be required in this case; and that a transcript of the record, proceedings and papers in this cause duly authenticated, may be sent to the said Circuit Court of Appeals for its consideration of said cause, and the defendants herewith submit their assignments of error in accordance with the rules of the United States Circuit Court of Appeals and the course and practice of this Honorable Court, and your Petitioners will ever pray.

LOUIS P. DONOVAN
Attorney for Defendants.

Thereafter, on December 20th, 1934, Assignment of Errors was duly filed herein, in the words and figures following, to wit: [82]

[Title of Court and Cause.]

ASSIGNMENTS OF ERRORS

The defendants above named in connection with their appeal in this cause, specify the following Assignments of Errors:

(1) That the Court erred in overruling the separate demurrers of the defendants, John Mars and Douglas Parker, to the Complaint in this action;

(2) The court erred in overruling the objection made by defendants at the opening of the trial objecting to the introduction of evidence;

(3) The Court erred in overruling defendants' objection to the introduction in evidence of the Judgment Roll in the case of United States of America against Everett Knaus filed May 8, 1931.

Said Judgment Roll consisted of an Information filed in the trial court April 27, 1931 against one Everett Knaus, and in the first count thereof it was charged that on April 16, 1931, said Everett Knaus "at and within those certain premises known as the Thompson Hotel in the Town of Sweet Grass, in the County of Toole and State of Montana * * * * did then and there wrongfully and unlawfully have and possess intoxicating liquor, to-wit: whiskey, wine and beer" (quantity unknown), and that he had been previously convicted. In the second count of said Infor- [83] mation, it was charged that on

the 16th day of April, 1931, said Everett Knaus "at and within those certain premises described in Count One hereof, did then and there wrongfully and unlawfully maintain a common nuisance, that is to say, a place where intoxicating liquor was possessed and kept in violation of title 2 of the National Prohibition Act", etc. Said Judgment Roll further showed that the parties waived jury trial, and tried said cause to the Court without a jury, and that on May 8, 1931 a Judgment was rendered in said cause by the Court finding said defendant, Everett Knaus, guilty as charged and imposed upon him a penalty of fine and imprisonment.

(4) The Court erred in admitting in evidence the Judgment Roll in Cause No. 2593, United States of America against Everett Knaus and C. J. Quisberg, filed in the trial court May 10, 1930. Said Judgment Roll consisted of an indictment filed in the trial court January 7, 1930 wherein the said Everett Knaus and C. J. Quisberg were charged with the following crimes, to-wit:

FIRST COUNT (Sale): That on or about October 20, 1929 said defendants, Everett Knaus and C. J. Quisberg, "at and within that certain two-story brick building known as the Thompson Hotel and operated by the defendant, Everett Knaus, and located on Lots 3 and 4, Block 2, Sweet Grass Original Townsite in the County of Toole and State and District of Montana * * * * did then and there wrongfully and unlawfully sell intoxicating liquor, to-wit: whiskey", etc.

SECOND COUNT (Possession Liquor): That on or about the 20th day of October, 1929, said defendant, Everett Knaus and C. J. Quisberg, at the same place "did then and there wrongfully and unlawfully have and possess intoxicating liquor, to-wit: whiskey, beer, gin and cognac", etc.

THIRD COUNT (Nuisance): That on or about the 20th day of October, 1929, said defendants, Everett Knaus and C. J. Quisberg, [84] at the same place "did then and there wrongfully and unlawfully maintain a common nuisance, that is to say, a place where intoxicating liquor was sold and kept in violation of Title 2 of the National Prohibition Act", etc.

Said Judgment Roll further showed that on May 10, 1930 said defendants, Knaus and Quisberg, entered pleas of guilty as charged, and on the same day judgment was entered against them finding them guilty and imposing sentences of fine and imprisonment.

(5) The Court erred in denying the Motion of the defendant, Harry Thompson, for a judgment of non-suit.

(6) The Court erred in denying the Motion of the defendants, Mars and Parker, for a judgment of non-suit.

(7) The Court erred in instructing or advising the jury to return a verdict for the plaintiff.

(8) The Court erred in entering a judgment herein for \$1,000.00 and interest thereon in the further sum of \$209.97 upon a verdict for recovery of

\$1,000.00 only without any provision for interest thereon.

(9) The defendant, Harry Thompson, separately assigns as error the decision of the court directing a verdict against him, the said Harry Thompson.

(10) The defendant, Harry Thompson, separately assigns as error the entering of a judgment against him, the said defendant, Harry Thompson.

LOUIS P. DONOVAN

Attorney for defendants
and appellants.

[Endorsed] : Filed Dec. 20—1934 [85]

Thereafter, on December 20th, 1934, Order Allowing Appeal was duly filed and entered herein, in the words and figures following, to wit: [86]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL

ON THIS 20th day of December, A. D., 1934, the defendants named in the above entitled cause, by their attorney, having filed herein and presented to this Court their Petition praying that an appeal from the judgment rendered herein be allowed, and having filed an Assignment of Errors intended to be urged by them and praying that a transcript of the records, proceedings and papers upon which said judgment herein was rendered duly authenticated may be presented to the United States Circuit Court of Appeals for the Ninth Circuit, and that a bond

for supersedeas as may be meet in the premises be fixed;

IT IS HEREBY ORDERED that said appeal be and the same hereby is allowed, and the court does hereby fix the amount of said supersedeas bond in the sum of Fifteen Hundred Dollars (\$1500.00), which bond when given and approved, shall operate as a supersedeas herein.

DATED this 20th day of December, A. D., 1934.

CHARLES N. PRAY,
JUDGE.

[Endorsed]: Filed Dec 20—1934 [87]

Thereafter, on December 20th, 1934, Citation on Appeal was duly issued herein, which original Citation is hereto annexed and is in the words and figures following, to wit: [88]

[Title of Court and Cause.]

CITATION ON APPEAL

THE PRESIDENT OF THE UNITED STATES,
TO THE UNITED STATES OF AMERICA,
GREETING:

YOU ARE HEREBY NOTIFIED that in a certain case in the District Court of the United States, for the District of Montana, wherein United States of America was plaintiff, and Harry Thompson, John Mars and Douglas Parker were defendants, an appeal has been allowed the said defen-

dants to the Circuit Court of Appeals of the United States for the Ninth Circuit—

AND YOU ARE HEREBY CITED and admonished to be and appear in the United Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, County of San Francisco and State of California within thirty (30) days from the date of this Citation to show cause, if any there be, why the judgment appealed from should not be corrected or reversed or a new trial granted and speedy justice done to the said parties in that behalf.

DATED at Great Falls, Montana, this 20th day of December, A. D., 1934.

CHARLES N. PRAY

JUDGE. [89]

DUE PERSONAL SERVICE of the foregoing Citation made and admitted and receipt of copy thereof, together with copy of Petition for Appeal, Assignment of Errors and Order allowing said Appeal, acknowledged this 26th day of December, A. D., 1934

ROY F. ALLAN

Asst. U. S. Atty.,

Attorneys for Plaintiff. [90]

[Endorsed]: Filed Dec 31—1934 [91]

Thereafter, on December 20th, 1934, Bond on Appeal was duly filed herein, in the words and figures following, to wit: [92]

[Title of Court and Cause.]

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That Harry Thompson, John Mars and Douglas Parker, as principals, and NATIONAL SURETY CORPORATION, a Surety Company duly authorized to act as surety upon bonds in the State of Montana, are held and firmly bound unto UNITED STATES OF AMERICA, the plaintiff above named, in the full and just sum of FIFTEEN HUNDRED DOLLARS (\$1500.00) to be paid to United States of America, plaintiff as aforesaid, to which payment well and truly to be made, we bind ourselves and our successors in interest and assigns, jointly and severally by these presents.

DATED at Great Falls, Montana, this 18th day of December, A. D. 1934.

THE CONDITION of this obligation is such that WHEREAS lately at the District Court of the United States, for the District of Montana, in a suit pending in said court between the said plaintiff, United States of America, and Harry Thompson, John Mars and Douglas Parker, the said defendants, a judgment was rendered in favor of the said plaintiff and against the said defendants under date November 3, 1934, and said defendants having thereafter filed a Petition for Appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse and set aside said judgment aforesaid, and for a Citation

directed to the United States of America citing and admonishing the said United [93] States of America to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, County of San Francisco, State of California, as by law provided,

NOW, THEREFORE, if the said defendants shall prosecute said appeal to effect and answer and all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise to remain and be in full force and effect.

HARRY THOMPSON

JOHN MARS

DOUGLAS PARKER

PRINCIPALS

[Seal]

NATIONAL SURETY CORPORATION

By SARAH F. MacHALE

Its Attorney in fact.

SURETY.

THE FOREGOING BOND is hereby approved.
DATED this 20th day of December, A. D. 1934.

CHARLES N. PRAY

JUDGE.

[Endorsed] : Filed Dec 20—1934 [94]

Thereafter, on December 20th, 1934, Appellants' Praeceptum for Transcript of Record on Appeal was duly filed herein, in the words and figures following, to wit: [95]

[Title of Court and Cause.]

PRAECEPTUM

TO C. R. GARLOW, ESQ., CLERK OF THE DISTRICT COURT ABOVE NAMED:

You will kindly prepare and certify a transcript of record on appeal from the Judgment rendered and entered in the above entitled cause under date November 3, 1934, and include therein the following papers, to-wit:

1. Judgment Roll in the above entitled cause consisting of:
 - (a) The Complaint in said action;
 - (b) The Summons, with return of service thereof;
 - (c) The separate Demurrers of the defendants, John Mars and Douglas Parker;
 - (d) The Order of the court overruling said Demurrers;
 - (e) The Answer of the defendants, John Mars and Douglas Parker;
 - (f) Verdict of the Jury;
 - (g) Judgment herein;
 - (h) Your Certificate to the Judgment Roll showing that the foregoing papers constitute the entire Judgment Roll;

2. Bill of Exceptions;
3. Petition for Appeal;
4. Assignment of Errors;
5. Order allowing appeal and fixing amount of bond;
6. Citation on Appeal;
7. Supersedeas Bond.
8. Praecepte for Transcript of Record.

DATED this 20th day of December, A. D., 1934.

LOUIS P. DONOVAN
Attorney for Defendants.

[Endorsed]: Filed Dec 20—1934 [96]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD.

United States of America,
District of Montana—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 96 pages, numbered consecutively from 1 to 96, inclusive, is a full, true and correct transcript of the complete record and proceedings in case No. 833, United States vs. Harry Thompson, et al, as appears from the original records and files of said court in my custody as such Clerk; and I do further certify and return that I have annexed to said transcript

and included within said pages the original Citation issued in said cause.

I further certify that the costs of said transcript of record amount to the sum of Twenty-seven & 80/100 Dollars, (\$27.80), and have been paid by the appellants.

WITNESS my hand and the seal of said court at Great Falls, Montana, this January 10th, A. D. 1935.

[Seal]

C. R. GARLOW
Clerk as aforesaid. [97]

[Endorsed]: Transcript of Record. Filed January 14, 1935. Paul P. O'Brien, Clerk, United States Circuit Court of Appeals for the Ninth Circuit.

